

March 6, 2007

## ENVIRONMENTAL COMMITTEE/BENTON COUNTY PLANNING BOARD REPORT

An Environmental Committee/Benton County Planning Board meeting was held on Tuesday, March 6, 2007 at 5:30 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Environmental Committee Members Present: Brown, Glass, Hubbard, Moore, Schindler, Winscott, Wozniak

Planning Board Members Present: Bill Kneebone, Melana Ewing, Don Phillips, Adele Lucas

Others Present: JP Summers, JP Wolf, Planning Director Ashley Pope

Media: Jennifer Turner, Daily Record; Scarlet Simms, Morning News

JP Jim Wozniak called the meeting to order at 5:30 p.m.

### **MINUTES:**

JP Moore made motion to approve the minutes of the February 6, 2007 meeting as distributed, seconded by JP Glass. Motion passed by unanimous show of hands vote.

JP Wozniak stated that this meeting is a work session, and will be conducted informally between the Environmental Committee and Planning Board members. He added that the meeting will last no longer than 2 hours.

### **PUBLIC COMMENTS:**

Don Day stated that the draft ordinance they are working from is one written by Randall Ward, and then modified by former Benton County Attorney Ed Gartin at the request of the Environmental Committee. He said he would like to compliment Planning Board member Scott Borman's revisions to the ordinance, because he seems to have narrowed the intent to health and safety issues. He listed several changes made by Scott Borman to the draft, and stated that the legislature is currently considering a change to the 10-acre exemption to include property over 10 acres if the nuisance can be seen from a highway. He said that there are several items in the proposed ordinance that are already covered by state code.

Bob Kossieck stated that he would like to second Mr. Day's comments, and that they should also look at discarding certain items that are prohibited under A.C.A 8-6-408.

Tom Jones, President of Beaver Shores Property Owner's Association, urged the committee to adopt the ordinance. He distributed folders containing pictures of several pieces of property in Beaver Shores and along Highway 94. He said that they can send a letter to the property owner, and if it is ignored their only recourse is the court system. He said they located a resource that will come and haul away abandoned cars at no cost to the property owner, but no one took advantage of it. He said that as a realtor, he cannot prove the exact effect on property values in

dollars, but he has toured prospective buyers who have said that they could not be paid to live where they would have to look at some of the properties depicted in the photos.

JP Schindler asked how many different properties are depicted in the photos. Tom Jones stated that there are 7 different properties shown in Beaver Shores, and 3 more that are located along Highway 94.

Melva Trager stated that the Beaver Shores Property Owner's Association does have some restrictions, but they are from 1968, and are the bare bones of the state requirements at that time. She said the covenants cannot be changed or modified without approval of 100% of the property owners, and some of them cannot even be located. She said that if they want Northwest Arkansas to be a jewel of the state, then they need to do something about the outlying areas that are not covered by cities and strict Architectural Control Committees.

JP Summers asked how far the Beaver Shores P.O.A. has pursued going through the court system, and if they had investigated how much it would cost. Tom Jones stated that they felt the problem is so rampant that it would be cost prohibitive. Melva Trager stated that they tried litigation about 12 years ago and paid a lot of money in attorney's fees, and some of the same people that were taken to court then are still doing the same things. She said the P.O.A. does not have the resources to afford attorneys' fees.

## **OLD BUSINESS:**

### **1. Proposed Nuisance Abatement Draft**

JP Wozniak stated that he had looked over the 5 drafts submitted by Planning Board members, and felt that Scott Borman's would be the easiest to work from, and they will go through it section by section and address any comments that were made. JP Hubbard asked if anyone had seen the revisions submitted by Tim Sorey. JP Wozniak stated that he received it earlier today. JP Hubbard stated that in his opinion it is more complete than Scott Borman's. JP Wozniak stated that Tim Sorey's does not address anything after page 6. JP Hubbard stated that Tim Sorey had deleted sections (v), (w), (x), and (y) and had given a good explanation why. JP Hubbard stated that he did not receive the other materials until Monday, and he would like to have had a week or so to study them and thought the meeting could have been put off another week.

The committee went through the draft ordinance and adopted the following changes:

*Whereas, the Quorum Court of Benton County (County) has found that conditions exist from time to time within the County that are a threat to the health, safety and welfare of the public ~~or obstruct the public in its free use of public property~~; and*

JP Glass suggested that anywhere in the ordinance that "risk to health and safety", the word "imminent" should be inserted before "risk".

## **ARTICLE 1 - Definitions**

(a) No change

(b) *Attractive Nuisance means a dangerous condition that may attract children thereby causing **an imminent** risk to their **health and** safety.*

- (c) No change
- (d) No change
- (e) No change

JP Summers asked who the County Health Officer is, and if it is a state employee would the county be able to give them any authority. He said that needs to be clarified before the final ordinance draft. JP Hubbard stated that they could strike it altogether because it is already covered under state law. JP Summers stated that it is not enforced. JP Hubbard stated that it is, that he called the State Health Department, and they told him that they enforce it all the time. He said there is a county procedure in place already, and is the point of this to take it off their hands completely. JP Wozniak stated that is the basis for the entire ordinance—that there may be state laws, but there is no one out there enforcing them. JP Hubbard stated that he gets septic tanks inspected once a week, so he gets a kick out of everyone saying that they do not get enforced. JP Summers asked if he had called about one that is failing. JP Hubbard stated that he talks to the Health Department frequently, and they have told him their procedures, and the third step is to turn it over to the Prosecuting Attorney. JP Hubbard asked Planning Director Ashley Pope if that was correct. Ashley Pope stated that is correct— if a department is not able to write citations directly, then the only alternative is to turn it over to the Prosecuting Attorney. She said that if the Environmental Services Department is enforcing the regulations, they are certified law enforcement officers and are authorized to issue citations on the spot, so they would not have to wait on the Prosecutor.

- (f) *Failing or Failed Septic System means any sewerage system that upon inspection by the ~~County Health Officer~~ **appropriate authority** or his deputy is determined to be functioning improperly thereby creating an existing or potential health hazard.*

JP Hubbard asked when they were going to establish fines, or is that something that will come later. Ashley Pope stated that it would be a good idea to establish those in a separate ordinance so that the nuisance ordinance does not have to be amended every time they want to change the fines.

- (g) *Imminent Life-Safety Hazard means any condition which creates a present, extreme, and immediate danger to life, ~~property~~, health, or public safety.*
- (h) *Legal Interest means any interest that is represented by a document such as a deed of trust, quitclaim deed, mortgage, judgment lien, tax, or assessment mechanic's lien or other similar instrument which is recorded with the ~~County Recorder~~ **records of Benton County**.*

The committee discussed a suggestion by Scott Borman to add a professional engineer and 3 members of the public to the appeals board. JP Wozniak stated that they will have to check with the County Attorney to see if the public is allowed to be on the board. JP Moore asked how much an engineer will cost. JP Glass stated that a Professional Engineer might be too restrictive, because if they just need someone to declare the building structurally unsafe, then a licensed contractor could suffice. Bill Kneebone stated that every situation might not require the services of an engineer. JP Hubbard asked if the entire board would be paid, or would they just ask

members of the public to donate their time. Adele Lucas stated that a board of 7 members becomes unwieldy. JP Moore asked how they would be chosen. JP Schindler stated that the decision should be made by those who are elected by the people. Ashley Pope stated that the staff recommendation would be for the appeal board to remain the same for the sake of uniformity of all of the other ordinances. JP Hubbard stated that his concern is that there will be so many appeals that it may require a lot of someone's time. JP Wozniak stated that it will have to be determined if there is really a nuisance, and just because there is a complaint does not mean there is necessarily a nuisance. JP Schindler stated that just because there is a nuisance does not necessarily mean there will be an appeal. JP Moore stated that one comment was that none of the 3 Justices appointed be from the district from which the appeal is taking place. Ashley Pope stated that she thought that was already the policy. JP Winscott stated that he would like to see 2 volunteer members of the public added to the committee. A straw vote resulted in 10 votes in favor of a 3-member board and two votes in favor of a 5-member board.

(i) No change.

(j) Deleted.

(k) No change

(l) No change

(m) *Property means any real property, premises, or structure. ~~on which a public Nuisance is alleged to exist.~~*

(n) *Public Nuisance means any condition ~~including, but not limited to an Attractive-Nuisance, junked motor vehicle, inoperable household appliance, or junked-manufactured home, mobile home or trailer, caused, maintained or permitted to exist in the unincorporated areas of Benton County, Arkansas, which constitutes a~~ is deemed, by the appropriate authority designated by this ordinance, to be an imminent threat to the public's health, safety, and welfare. ~~or which significantly obstructs, injures or interferes with the reasonable or free use of property in a neighborhood, community or to a considerable number of persons.~~*

(o) No change

JP Wozniak stated that one of the comments concerning Paragraph (o) stated that they would like to see "Director" defined. The committee decided to add "Director" to the definitions and place it in the proper alphabetical position following Paragraph (e), and to read as follows:

***(f) Director means the Director of Benton County Environmental Services***

(p) No change

(q) No change

(r) No change

JP Wozniak stated that one of the comments on Paragraph (s) was to insert the phrase “after an onsite inspection”. JP Summers stated that an inspection will be performed anyway so it seems unnecessary. JP Hubbard asked how they would define “unsafe”, because 90% of the buildings out there, even a house built 2 years ago, do not meet code. Bill Kneebone responded that they can use the building codes. JP Hubbard stated that they are changed constantly. Bill Kneebone stated that the code is constantly updated with those changes. JP Wozniak stated that if it was legal when it was built, it should be okay unless something has happened in the meantime to make it unsafe. He added that common sense has to be used. JP Glass stated that they could add that the structure had to conform to the code at the time it was built. Ashley Pope stated that copies of old codes are not readily available, and she thinks the building inspector will have enough judgment to know what is unsafe. JP Moore suggested inserting “structurally” before “unsafe”. JP Glass suggested inserting “imminent” instead of “real and recognized” to keep it uniform.

- (s) *Unsafe Structure means, for the purpose of this ordinance, a structure that has been declared unsafe by the Building Official **and presents an imminent threat to public health and safety.***

JP Glass suggested changing the County Health officer to appropriate authority. JP Summers asked if they should delete the laundry list as they did in Paragraph (n). Ashley Pope stated that she liked the list, because it provides examples and includes the phrase “including but not limited to”. JP Glass stated that the threat to health and safety has been defined, so all the officers have to do is make that tie in and gave an example of an old car leaking radiator fluid and oil into the ground. Ashley Pope stated that it makes it more specific instead of vague. JP Hubbard asked if they wanted to give the inspector enough lateral movement by leaving in the phrase “in the opinion”, or do they need to set a guideline for him to follow. JP Glass stated that is why they have an appeals court. JP Moore stated that he thought they needed to keep the examples, because they are going in the opposite direction of where they were directed to go. He said they are moving toward a vaguer document instead of more specific. JP Glass stated that instead of listing these things they should define what an imminent threat is. JP Wozniak stated that would take another 6 months. JP Summers stated that it does not make sense to remove the laundry list in one section and keep it in another. Ashley Pope stated that she could develop a list of examples and add it as an appendix to the document. JP Hubbard stated that he did not think it was necessary, since imminent threat had already been defined, and it would just be more words to look at. JP Moore stated that this document is not just meant for County officials, but also for the public to give them an idea of what is considered to be a regulated condition. JP Glass stated that they could expand the definition of Imminent Life Safety Hazard in Paragraph (g) and include the examples.

- (g) *Imminent Life-Safety Hazard means any condition which creates a present, extreme, and immediate danger to life, health or public safety. **Examples of Imminent Life Safety Hazards include, but are not limited to:***

*i. an Attractive Nuisance;*

*ii. junked motor vehicle*

- iii. inoperable household appliance or furniture*
- iv. junked manufactured home, mobile home, or trailer;*
- v. excessive vegetation, waste, debris, or rubbish;*
- vi. failing or failed septic system; or*
- vii. an accumulation of garbage, animal or vegetable matter, human or animal excrement, dead animals, decomposing food and other refuse subject to putrefaction or decomposition that provides a harborage or sustenance for infestations of rats, roaches and other vermin and potential vectors of disease and contamination.*

(t) *Unsanitary Premises means premises upon which ~~in the opinion of the County Health Officer or his deputy~~ **the appropriate authority** has determined that there is ~~a Failing or Failed Septic System or an accumulation of garbage, animal or vegetable matter, human or animal excrement, dead animals, decomposing food and other refuse subject to putrefaction or decomposition that provides a harborage or sustenance for infestations of rats, roaches and other vermin and potential vectors of disease and contamination that present a hazard to the public health~~ **an imminent threat to the public health, safety, and welfare.***

JP Glass stated that instead of the language suggested by Scott Borman they should add “thereby causing an imminent threat to the public health, safety, and welfare”. He said that the rest of the language is a repeat of the language they just moved to paragraph (g) to define Life-Safety Hazard.

(u) *Vacant Building means for the purpose of this ordinance an unoccupied building that has been broken into, remains open to unauthorized entry and bears the evidence of vandalism and/or the accumulation of waste, rubbish, debris and excessive vegetation **thereby causing an imminent threat to the public health, safety, and welfare.***

JP Wozniak stated that paragraph (v) says the same thing. JP Summers stated that he agrees with Tim Sorey’s comments on Page 6, which applies to paragraphs (v), (w), (x) and (y), and states that it does not matter what source may be causing a hazard to public health, only that a hazard exists, and if so should be dealt with. JP Wozniak stated that the junked motor vehicles and appliances are specifics that the Environmental Committee requested. JP Wozniak suggested deleting “v” thru “y” and adding them to list of examples in paragraph “g”. JP Hubbard stated that they would have to be imminent life-safety hazards. (See paragraph ~~(g)~~ (h) above.)

- (v) Deleted
- (w) Deleted
- (x) Deleted
- (y) Deleted

## ARTICLE 2. Summary Abatement

JP Hubbard stated that he is not comfortable with them being able to do the summary abatement without contacting the owner at all. JP Glass stated that they could change the clause which states "The Director, as soon as feasible, shall make every reasonable effort to notify the Responsible Person/Owner of the property." He added that this is for situations that have to be taken care of immediately, without time to wait for notifying the owner. JP Hubbard stated that it is not that specific. JP Moore stated that Items 1 thru 6 give very specific guidelines. JP Summers asked if requiring the County Sheriff, County Judge, and the County Health Officer to be in conjunction with the Director on a summary abatement is doable. JP Wozniak stated that is why they included their deputy or designated representative. Ashley Pope stated that it provides a check and balance on something that is being done without the owner's consent. JP Summers stated that he thinks there should be more language about what constitutes the emergency, so this is not done routinely. Ashley Pope stated that summary abatement is not a routine thing, but is like when a tree falls on a house. JP Summers asked if that is spelled out. JP Glass stated that paragraph (a) explains that the Director makes the determination that something needs to be done immediately and then confers with the County Judge and the Sheriff. There was discussion concerning the method and time frame for notifying the owner after a summary abatement has taken place.

- (a) *The Director, ~~of Environmental Services/Benton county~~ or state certified environmental officer(s) [{"Director"}], upon determination that an Imminent Life-Safety Hazard exists on a property, shall initiate Summary Abatement procedures to eliminate the immediacy of the hazard.*

*The Director, in conjunction with the County Sheriff, the County Judge, and the County Health Officer, or their designated deputy or representative, may, without prior notice to the owner or Responsible Person: as soon as feasible but within no more than 24 hours, shall make every reasonable effort to notify the Responsible Person/Owner of the property.*

(1) thru (6) No Change

*The Director, as soon as feasible **but within no more than 24 hours**, shall make every reasonable effort to notify the Responsible Person/Owner of the property.*

- (b) No Change
- (c) No Change
- (d) No Change
- (e) No Change

There was discussion concerning the right of entry, and what would define "reasonable effort" to notify the owner. JP Glass asked why this paragraph was even included under the Summary Abatement section. JP Hubbard stated that when they were talking about summary abatement they were talking about disasters, and now they are talking about knocking on doors and getting permission.

- (f) Deleted
- (g) Deleted

**ARTICLE 3. Abatement in Other Cases; Notice, etc.**

No change

**ARTICLE 4. Abatement by Owner**

No change

**ARTICLE 5. Appeal Procedures; Hearing**

No change

**ARTICLE 6. Abatement by County**

No change

**ARTICLE 7. Notice of Assessment; Appeal of Charges**

- (a) No change
- (b) No change
- (c) No change

JP Glass stated that he had a general question that he asked earlier, and that is how we are going to pay for this. JP Hubbard stated that there has been no answer. Ashley Pope stated that the costs will be absorbed by the Environmental Office, and if necessary they will have to come to the Quorum Court and request additional officers as part of their budget.

*(d) If no appeal of a determination by the Director is filed within thirty (30) days and the assessment is unpaid, a copy of the determination will be furnished to the county comptroller who shall then enter a lien in the amount determined by the Director in the ~~Benton County Recorder's~~ Records of Benton County liens docket.*

- (e) No change
- (f) No change
- (g) No change
- (h) No change
- (i) No change

JP Glass suggested adding language which explains that the next step will be an appeal to the Circuit Court. Ashley Pope suggested using language commonly used in other ordinances. JP Glass asked her to add it as paragraph "J". Ashley Pope stated that she would include it in the revisions.

**ARTICLE 8. Personal Liability of Owner/Responsible Person**

No change

**ARTICLE 9. Cost of Abatement; Waiver**

No change



## ARTICLE 10. Account of Expenses Incurred

No change

## ARTICLE 11. Records

No change

## ARTICLE 12. Exceptions

There was discussion concerning the exemption for agricultural land. JP Wozniak suggested using the language from the original ordinance. The committee discussed whether foul odors could be considered a risk to public health. JP Winscott noted that noise is also not covered in this ordinance. JP Summers stated that they cannot regulate everything in the county. JP Wozniak stated that they need a place to start, and they all seem to be in agreement that this ordinance is it. He said that if they decide later on that noise needs to be addressed, they can add to the ordinance. Ashley Pope stated that they would have to have a way of measuring noise. JP Winscott stated that he had three calls in one weekend from people who were ill and could not rest due to the noise from a neighbor. JP Wozniak explained how that would be handled in Bella Vista. JP Winscott stated that the people had called the Sheriff's office.

JP Summers asked for clarification on the exemption for agricultural land. JP Wozniak stated that they would use paragraphs (a) and (c) from the original document and add paragraph (b) from the revised document.

*This Ordinance shall not apply to:*

*(a) Land valued as agricultural property that is being farmed or otherwise used for agricultural purposes; or **agricultural operations described in Arkansas Code Annotated sections 2-4-101 and 2-4-107.***

*(b) Other exemptions as allowed by Arkansas Annotated Code*

## APPENDIX 1.

The committee discussed the Standards for Boarding a Vacant Building. JP Glass stated that it would seem to him that the Director would make the determination of how to board up the building. JP Wozniak stated they could delete the Appendix entirely, and remove all previous references to it. JP Moore stated that people might need some guidelines to secure a vacant building to avoid violating the ordinance. JP Glass stated that they can deal with that in the definitions section under "Boarded", and say that "boarded" is securing the building so that all means of entry and exit are blocked.

## ARTICLE 1. Definitions

*(c) Boarding means securing a vacant building or an unsafe building by barricading against unauthorized entry all windows, ~~unsubstantial~~ doors, and other openings. ~~and maintaining the Premises to the standards described herein (Appendix 1). Boarding abates a Public Nuisance determination.~~*

JP Wozniak asked if there were any other questions. JP Glass asked if they should include language in the abatement section of the ordinance that the Environmental Office is responsible for costs associated with abatement procedures. JP Hubbard stated that it should definitely come out of that office. JP Moore stated that in the past, if the Environmental Office encountered large trash dumps and did not have enough money in the budget to cover the clean up cost, they have come to the Quorum Court for additional funds. JP Summers stated that the Environmental Office will need some time after the ordinance is passed to see what its impact is on their budget. JP Hubbard asked if they had talked at all about additional staff and equipment needs. Ashley Pope stated that they have 4 employees who can make inspections, and they have a Chief Building Inspector who would declare a building unsafe, so it would be among his normal duties. JP Glass stated that they could set a maximum amount that could be spent without asking for Quorum Court approval, and next year the Environmental budget needs to include funds for these abatements. He said he likes the idea of stating which line item the costs will be charged to.

JP Wozniak asked if everyone on the Environmental Committee and the Planning Board could live with everything that has been done tonight. JP Wozniak stated that Ashley Pope would draft a version with all of the changes, and it will then go to County Attorney Robin Green for her approval. He said it will then go to the Committee of Thirteen, possibly in April, and they will get copies of the new draft to everyone in plenty of time to review it.

JP Hubbard asked when they were going to discuss the Nuisance Abatement Plan. JP Wozniak stated that they decided at the last Environmental Committee not to address it at this time. He said that any future land use ordinances will be preceded by a plan. He said that another Public Hearing will be necessary since changes were made, and that could possibly take place in April. He said the ordinance could then go to the April 26 Quorum Court meeting for its first reading, and they intend to read it at three separate meetings.

JP Summers thanked the Planning Board members for their work on the ordinance, and said it was obvious that they should have had a joint work session a long time ago.

#### **OTHER BUSINESS:**

None

After motion and second the meeting was adjourned at 7:20 p.m.